**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**INCOME TAX REFERENCE NO.596 OF 1998**

The Commissioner of Income-tax ..Applicant.

V/s.

M/s.Elite Sales Corporation ..Respondent.

Mr.A.S.Rao for applicant.

**CORAM : V.C. DAGA AND**
**J.P.DEVADHAR, JJ.**

**DATED : 28TH MARCH, 2005.**

**P.C. :-**

1. In this reference, the questions referred for the opinion of this Court read as under :-

> "1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in directing the ITO to allow depreciation and investment allowance on the cost of the assets without deducting the amount of subsidy received from the government for purchase of such assets ?
>
> 2. Whether, on the facts and in the circumstances of the case, the Tribunal overlooked the facts that the cost of depreciable asset to the assessee is the actual cost, after deducting

the subsidy received from the Government ? "

2. So far as the first question is concerned, the same has been answered by the Apex Court in the case of **C.I.T. V/s. P.J. Chemicals Ltd. [(1994) 210 I.T.R. 830 (S.C.)]** in favour of the assessee and against the revenue. Whereas, the second question has been answered by the Division Bench of this Court in the case **C.I.T. V/s. Menezes Farmaco [(1999) 236 I.T.R. 780 (Bom.)** in favour of the assessee and against the revenue.

3. In the above view of the matter, both the questions are answered in the affirmative i.e. in favour of the assessee and against the revenue. Accordingly, reference stands disposed of with no order as to costs.

**(V.C. DAGA, J.)**

**(J.P.DEVADHAR, J.)**